

103^D CONGRESS
2^D SESSION

S. 1950

To amend the Occupational Safety and Health Act of 1970 to make needed revisions in regulations and programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, FEBRUARY 22), 1994

Mrs. KASSEBAUM (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Occupational Safety and Health Act of 1970 to make needed revisions in regulations and programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Occupational Safety and Health Reform Act”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference
9 shall be considered to be made to a section or other provi-

1 sion of the Occupational Safety and Health Act of 1970
2 (29 U.S.C. 651 et seq.).

3 **SEC. 2. PUBLIC EMPLOYEES.**

4 (a) DEFINITION OF EMPLOYER.—Section 3(5) (29
5 U.S.C. 652(5)) is amended to read as follows:

6 “(5) The term ‘employer’—

7 “(A) means a person engaged in a business
8 affecting commerce who has employees;

9 “(B) includes a congressional employer
10 and any person acting directly or indirectly in
11 the interest of an employer in relation to an in-
12 dividual employed by any entity of the executive
13 or judicial branch of the Government; and

14 “(C) does not include any State or political
15 subdivision of a State.”.

16 (b) DEFINITION OF CONGRESSIONAL EMPLOYER.—
17 Section 3 (29 U.S.C. 652) is amended by adding at the
18 end the following new paragraph:

19 “(15) The term ‘congressional employer’ means
20 an individual who has the final authority to appoint,
21 hire, and set the terms, conditions, or privileges of
22 the congressional employment of any individual em-
23 ployed by any entity of the legislative branch of the
24 Government.”.

25 (c) REPEALS AND CONFORMING AMENDMENTS.—

1 (1) Section 19 (29 U.S.C. 668) is repealed.

2 (2) Section 410(b) of title 39, United States
3 Code, is amended—

4 (A) by striking paragraph (7);

5 (B) in paragraph (9), by striking “and”;

6 (C) in paragraph (10), by striking the pe-
7 riod and inserting “; and”; and

8 (D) by redesignating paragraphs (8), (9),
9 (10), and (11) as paragraphs (7), (8), (9), and
10 (10), respectively.

11 (3) Section 1312(c) of the Atomic Energy Act
12 of 1954 (42 U.S.C. 2297b–11(c)) is amended—

13 (A) by striking “sections 3(5), 4(b)(1), and
14 19” and inserting “sections 3(5) and 4(b)(1)”;
15 and

16 (B) by striking “(29 U.S.C. 652(5),
17 653(b)(1), and 668))” and inserting “(29
18 U.S.C. 652(5) and 653(b)(1))”.

19 **SEC. 3. OCCUPATIONAL SAFETY AND HEALTH STANDARDS.**

20 (a) REGULATORY FLEXIBILITY ANALYSIS.—Section
21 6 (29 U.S.C. 655) is amended by adding at the end the
22 following new subsections:

23 “(h) In promulgating any occupational safety and
24 health standard under subsection (b), the Secretary shall

1 perform a regulatory flexibility analysis described in sec-
2 tions 603 and 604 of title 5, United States Code.

3 “(i) In promulgating any occupational safety and
4 health standard under subsection (b), the Secretary shall
5 minimize the time, effort, and costs involved in the reten-
6 tion, reporting, notifying, or disclosure of information to
7 the Secretary, to third parties, or to the public to the ex-
8 tent consistent with the purpose of the standard. Compli-
9 ance with the requirement of this subsection may be in-
10 cluded in a review under subsection (f).”.

11 (b) ECONOMIC IMPACT ANALYSIS.—The Secretary of
12 Labor shall conduct a continuing comprehensive analysis
13 of the costs and benefits of each standard in effect under
14 section 6 of the Occupational Safety and Health Act of
15 1970 (29 U.S.C. 655). The Secretary shall first report the
16 results of such analysis to Congress upon the expiration
17 of 2 years after the date of the enactment of this Act and
18 shall make such report every 2 years thereafter.

19 **SEC. 4. VARIANCES.**

20 Section 6(d) (29 U.S.C. 655(d)) is amended by add-
21 ing at the end the following new sentence: “No citation
22 shall be issued for a violation of an occupational safety
23 and health standard that is the subject of an application
24 for a variance (which has been pending before the Sec-

1 retary for at least 90 days), during the period the applica-
2 tion is pending before the Secretary.”.

3 **SEC. 5. INSPECTIONS.**

4 (a) TRAINING AND AUTHORITY OF SECRETARY.—
5 Section 8 (29 U.S.C. 657) is amended by redesignating
6 subsection (g) as subsection (l) and by adding after sub-
7 section (f) the following new subsections:

8 “(g) Inspections shall be conducted under this section
9 by at least one individual who has training in and is
10 knowledgeable of the industry or types of hazards being
11 inspected.

12 “(h) The Secretary shall enter into agreements with
13 other Federal agencies and with States to train the inspec-
14 tion personnel of agencies that conduct inspections of em-
15 ployers to determine if employee fire protection is ade-
16 quate and to identify recognizable dangerous conditions,
17 and shall establish a system for the referral of information
18 with respect to fire hazards and such dangerous conditions
19 to the Secretary.

20 “(i)(1) Except as provided in paragraph (2), the Sec-
21 retary shall not conduct routine inspections of, or enforce
22 any standard, rule, regulation, or order under this Act
23 with respect to—

1 “(A) any person who is engaged in a farming
2 operation that does not maintain a temporary labor
3 camp and that employs 10 or fewer employees; or

4 “(B) any employer of not more than 10 employ-
5 ees if such employer is included within a category of
6 employers having an occupational injury or a lost
7 work day case rate (determined under the Standard
8 Industrial Classification Code for which such data
9 are published) that is less than the national average
10 rate as most recently published by the Secretary act-
11 ing through the Bureau of Labor Statistics under
12 section 24.

13 “(2) Paragraph (1) shall, in the case of persons who
14 are not engaged in farming operations, not be construed
15 to prevent the Secretary from—

16 “(A) providing consultations, technical assist-
17 ance, and educational and training services and con-
18 ducting surveys and studies under this Act;

19 “(B) conducting inspections or investigations in
20 response to employee’s complaints, issuing citations
21 for violations of this Act found during such an in-
22 spection, and assessing a penalty for violations that
23 are not corrected within a reasonable abatement
24 period;

1 “(C) taking any action authorized by this Act
2 with respect to imminent dangers;

3 “(D) taking any action authorized by this Act
4 with respect to health standards;

5 “(E) taking any action authorized by this Act
6 with respect to a report of an employment accident
7 that is fatal to at least one employee or that results
8 in the hospitalization of at least three employees,
9 and taking any action pursuant to an investigation
10 conducted with respect to such report; and

11 “(F) taking any action authorized by this Act
12 with respect to complaints of discrimination against
13 employees for exercising their rights under this
14 Act.”.

15 (b) EMPLOYEE NOTICE.—Section 8(f)(1) (29 U.S.C.
16 657(f)(1)) is amended—

17 (1) in the third sentence, by striking “he shall
18 make” and inserting “the Secretary may make”; and

19 (2) in the fourth sentence—

20 (A) by striking “determines there” and in-
21 serting “determines that there”; and

22 (B) by striking “he shall notify” and in-
23 serting “or that the facts alleged in the notifi-
24 cation do not justify an exercise of the Sec-
25 retary’s inspection authority under subsection

1 (a) for any reason consistent with the standard
2 used by the Secretary to choose subjects for in-
3 spection under such subsection, the Secretary
4 shall notify”.

5 **SEC. 6. WORKSITE BASED INITIATIVES.**

6 (a) PROGRAM.—The Act is amended by inserting
7 after section 8 the following new section:

8 **“SEC. 8A. HEALTH AND SAFETY REINVENTION INITIATIVES.**

9 “(a) IN GENERAL.—The Secretary shall by regula-
10 tion establish a program to encourage voluntary employer
11 and employee efforts to provide safe and healthful working
12 conditions.

13 “(b) EXEMPTION.—In establishing a program under
14 subsection (a), the Secretary shall, in accordance with sub-
15 section (c), provide an exemption from all safety and
16 health inspections and investigations with respect to a
17 place of employment maintained by an employer, except
18 inspections and investigations conducted for the purpose
19 of—

20 “(1) determining the cause of a workplace
21 accident that resulted in the death of one or more
22 employees or the hospitalization of three or more
23 employees;

24 “(2) responding to a request for an inspection
25 pursuant to section 8(f)(1); or

1 “(3) carrying out a special emphasis program
2 under section 8.

3 “(c) EXEMPTION REQUIREMENTS.—In order to qual-
4 ify for the exemption provided under subsection (b), an
5 employer shall provide evidence that—

6 “(1) during the preceding year, the place of em-
7 ployment or conditions of employment have been re-
8 viewed or inspected under—

9 “(A) a consultation program provided by
10 recipients of grants under section 7(c)(1), 16
11 (c) or (d), or 23(g);

12 “(B) a certification or consultation pro-
13 gram provided by an insurance carrier or other
14 private business entity pursuant to a State pro-
15 gram, law, or regulation; or

16 “(C) a workplace consultation program
17 provided by a person certified by the Secretary
18 for purposes of providing such consultations,
19 that includes a means of ensuring that serious haz-
20 ards identified in the consultation are corrected
21 within an appropriate time; or

22 “(2) the place of employment has an exemplary
23 safety record and the employer maintains a safety
24 and health program for the workplace that in-
25 cludes—

1 “(A) procedures for assessing hazards to
2 the employer’s employees that are inherent to
3 the employer’s operations or business;

4 “(B) procedures for correcting or control-
5 ling such hazards in a timely manner based
6 upon the severity of the hazard; and

7 “(C) employee participation in the pro-
8 gram that includes at the least—

9 “(i) regular consultation between the
10 employer and nonsupervisory employees re-
11 garding safety and health issues;

12 “(ii) assurances that participating
13 nonsupervisory employees have training or
14 expertise on safety and health issues con-
15 sistent with the responsibilities of such em-
16 ployees; and

17 “(iii) the opportunity for non-
18 supervisory employees to make rec-
19 ommendations regarding hazards in the
20 workplace and to receive responses or to
21 implement improvements in response to
22 such recommendations.

23 “(d) APPLICABILITY TO THE NATIONAL LABOR RE-
24 LATIONS ACT.—In order to carry out the purposes of this
25 Act and to encourage employers and employees in their

1 efforts to reduce the number of occupational safety and
2 health hazards, section 8(a)(2) of the National Labor Re-
3 lations Act shall not apply to an employer that establishes,
4 assists, maintains, or participates in any organization,
5 health and safety committee, or other entity of any kind—

6 “(1) in which employees participate to discuss
7 matters of mutual interest (including issues of
8 health and safety, quality, productivity, or effi-
9 ciency); and

10 “(2) that does not have, claim, or seek author-
11 ity, to negotiate or enter into collective bargaining
12 agreements under such Act with the employer or, to
13 amend existing collective bargaining agreements be-
14 tween the employer and any labor organization.

15 “(e) CERTIFICATION.—The Secretary may require
16 that an employer in order to claim the exemption under
17 subsection (b) give certification to the Secretary and no-
18 tice to the employer’s employees of such eligibility.

19 “(f) RECORDS.—Records of safety and health inspec-
20 tions, audits, or reviews conducted by an employer and
21 not required by this Act shall not be required to be dis-
22 closed to the Secretary except as may be necessary to de-
23 termine eligibility for an exemption from inspection under
24 this section.”.

1 (b) DEFINITION.—Section 3 (29 U.S.C. 652) as
2 amended by section 2(b) is further amended by adding at
3 the end the following new paragraph:

4 “(16) The term ‘exemplary safety record’
5 means such record as the Secretary shall annually
6 determine for each industry. Such record shall in-
7 clude employers that have had, in the most recent
8 reporting period, no employee death caused by occu-
9 pational injury and fewer lost workdays due to occu-
10 pational injury and illness than the average for the
11 industry of which the employer is a part.”.

12 **SEC. 7. EMPLOYER DEFENSES.**

13 Section 9 (29 U.S.C. 658) is amended by adding at
14 the end the following new subsections:

15 “(d) No citation may be issued under subsection (a)
16 to an employer unless the employer knew or with the exer-
17 cise of reasonable diligence would have known of the pres-
18 ence of the alleged violation. No citation shall be issued
19 under subsection (a) to an employer for an alleged viola-
20 tion of section 5, any standard, rule, or order promulgated
21 pursuant to section 6, any other regulation promulgated
22 under this Act, or any other occupational safety and
23 health standard, if such employer demonstrates that—

1 “(1) employees of such employer have been pro-
2 vided with the proper training and equipment to pre-
3 vent such a violation;

4 “(2) work rules designed to prevent such a vio-
5 lation have been established and adequately commu-
6 nicated to employees by such employer and the em-
7 ployer has taken reasonable measures to discipline
8 employees when violations of such work rules have
9 been discovered;

10 “(3) the failure of employees to observe work
11 rules led to the violation; and

12 “(4) reasonable steps have been taken by such
13 employer to discover any such violation.

14 “(e) A citation issued under subsection (a) to an em-
15 ployer who violates the requirements of section 5, of any
16 standard, rule, or order promulgated pursuant to section
17 6, or any other regulation promulgated, under this Act
18 shall be vacated if such employer demonstrates that em-
19 ployees of such employer were protected by alternative
20 methods equally or more protective of the employee’s safe-
21 ty and health than those required by such standard, rule,
22 order, or regulation in the factual circumstances underly-
23 ing the citation.

1 “(f) Subsections (d) and (e) shall not be construed
2 to eliminate or modify other defenses that may exist to
3 any citation.”.

4 **SEC. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW**
5 **COMMISSION.**

6 (a) SECTION 10.—Section 10(c) (29 U.S.C 659(c))
7 is amended—

8 (1) in the first sentence, by striking “fifteen
9 working days” and inserting “30 working days”;
10 and

11 (2) by striking the second sentence and insert-
12 ing the following: “The Commission shall issue an
13 order, based on de novo findings of fact and de novo
14 conclusions of law, affirming, modifying, or vacating
15 the Secretary’s citation or proposed penalty or di-
16 recting other appropriate relief. Such order shall be-
17 come final 30 days after such order is issued.”.

18 (b) SECTION 11.—Section 11(a) (29 U.S.C 660(a))
19 is amended by inserting after “conclusive” at the end of
20 the sixth sentence the following: “and the Commission’s
21 conclusions with respect to questions of law shall be given
22 deference if reasonable”.

1 **SEC. 9. DISCRIMINATION.**

2 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
3 ing paragraphs (2) and (3) and inserting the following
4 new paragraphs:

5 “(2) Any employee who believes that the employee
6 has been discharged or otherwise discriminated against by
7 any person in violation of paragraph (1) or who believes
8 that the employee has been discharged or discriminated
9 against because of an action taken by the employee’s em-
10 ployer in violation of section 28, may, not later than 60
11 days after the date on which such violation occurs, file
12 a complaint with the Secretary alleging such discrimina-
13 tion. Upon receipt of such a complaint, the Secretary shall
14 notify the person named in the complaint and commence
15 an investigation to determine if the Secretary should, on
16 behalf of such employee, file such complaint with the Com-
17 mission to request the Commission to take action on the
18 basis of such complaint. The Secretary shall make such
19 determination not later than 90 days after the filing of
20 such complaint.

21 “(3) If within such 90-day period, the Secretary does
22 not file a complaint on behalf of the complainant with the
23 Commission, such employee may file such complaint with
24 the Commission. If such a complaint is filed with the Com-
25 mission, the Commission shall provide opportunity for a
26 hearing (in accordance with section 554 of title 5, United

1 States Code, but without regard to subsection (a)(3) of
2 such section), and issue an order, based upon findings of
3 fact and conclusions of law. In such an order, the Commis-
4 sion may require a person charged with committing a vio-
5 lation of paragraph (1) to take appropriate affirmative ac-
6 tion, including the rehiring or reinstatement of the em-
7 ployee to the employee's former position with back pay and
8 interest. Upon completion of a proceeding on such order,
9 the Commission may award the prevailing party a reason-
10 able attorney's fee. Final orders of the Commission may
11 be appealed as provided in subsection (a).

12 “(4)(A) Anytime after a complaint has been filed with
13 the Secretary alleging a violation of paragraph (1), the
14 complaining employee, the person charged with commit-
15 ting the violation (referred to in this paragraph as the ‘re-
16 spondent’), or the Secretary has the right to request that
17 the complaint be referred to the Federal Mediation and
18 Conciliation Service (referred to in this paragraph as the
19 ‘Service’) for mediation of the dispute. In lieu of receiving
20 mediation services from the Service, the parties may upon
21 mutual agreement refer the complaint to a mediator other
22 than a mediator provided by the Service.

23 “(B) During mediation, the respondent and the com-
24 plaining party may be represented by legal counsel or
25 other representative of such respondent's or party's choice.

1 “(C)(i) All contested proceedings shall be stayed dur-
2 ing the time for mediation and neither the Secretary nor
3 the complaining party shall file a complaint pending com-
4 pletion of the mediation.

5 “(ii) The mediator shall have 60 days from the date
6 of the referral to mediate to complete the mediation. If
7 the complaint has not been resolved within such 60-day
8 period or such extension as may be agreed upon, the medi-
9 ation shall be deemed to be completed. The parties may
10 extend the mediation for an additional 60 days by mutual
11 agreement.

12 “(iii) The complaint shall be resolved through medi-
13 ation in a manner that is mutually agreeable to the par-
14 ties. The resolution of the complaint shall be binding upon
15 the parties and shall preclude resort to other legal pro-
16 ceedings except as provided in subparagraph (E).

17 “(D)(i) Any agreement shall be kept confidential by
18 the parties to the mediation unless all parties to the medi-
19 ation agree otherwise in writing.

20 “(ii) All communications, oral or written, made in
21 connection with the mediation (including memoranda,
22 work product, transcripts, notes, or other materials) shall
23 be kept confidential by the participants to the mediation.

24 “(iii) The material referred to in clause (ii) shall not
25 be subject to disclosure through discovery or compulsory

1 process and shall not be used as evidence in any investiga-
 2 tory, arbitral, judicial, administrative, or other proceeding.

3 “(E) A party to an agreement made pursuant to me-
 4 diation under this paragraph may bring an action to en-
 5 force the agreement in any Federal or State court of com-
 6 petent jurisdiction.

7 “(F) Except as provided in subparagraph (C)(iii),
 8 nothing in this paragraph shall be interpreted to effect or
 9 modify whatever rights and obligations the parties may
 10 have under arbitration agreements or other form of alter-
 11 native dispute resolution mechanisms.”.

12 **SEC. 10. ENFORCEMENT.**

13 (a) SPECIAL CONDITIONS AND PRACTICES.—Section
 14 13 (29 U.S.C. 662) is amended—

15 (1) by striking subsection (c);

16 (2) by redesignating subsections (a) and (b) as
 17 subsections (b) and (c), respectively; and

18 (3) by inserting before subsection (b) (as so re-
 19 designated) the following new subsection:

20 “(a)(1) If the Secretary determines, on the basis of
 21 an inspection or investigation under this section, that a
 22 condition or practice in a place of employment is such that
 23 an imminent danger to safety or health exists that could
 24 reasonably be expected to cause death or serious physical
 25 harm or permanent impairment of the health or functional

1 capacity of employees if not corrected immediately or be-
2 fore the imminence of such danger can be eliminated
3 through the enforcement procedures otherwise provided by
4 this Act, the Secretary may so inform the employer and
5 provide notice by posting to the affected employees and
6 shall request that the condition or practice be corrected
7 immediately or that employees be immediately removed
8 from exposure to such danger. The notice shall be removed
9 by the Secretary from the place of employment not later
10 than 72 hours after the notice was first posted unless a
11 court in an action brought under subsection (c) requires
12 that the notice be maintained. The Secretary shall not pre-
13 vent the continued activity of employees whose presence
14 is necessary to avoid, correct, or remove such imminent
15 danger or to maintain the capacity of a continuous process
16 operation to resume normal operations without a cessation
17 of operations or where cessation of operations is necessary,
18 to permit such to be accomplished in a safe and orderly
19 manner.

20 “(2) No person shall discharge or in any manner dis-
21 criminate against any employee because such employee
22 has refused to perform a duty that has been identified as
23 the source of an imminent danger by a notice posted pur-
24 suant to paragraph (1).”.

1 (b) MANDATORY SPECIAL EMPHASIS.—Section 8 (29
2 U.S.C. 657), as amended by section 6, is further amended
3 by adding after subsection (i) the following new sub-
4 section:

5 “(j)(1) The Secretary shall establish and carry out
6 a special emphasis program for identifying and correcting
7 existing or newly recognized hazards in selected industries
8 and operations and high hazard industries and operations.

9 “(2) Each special emphasis program under para-
10 graph (1) shall consist of a planned and coordinated ef-
11 fort, including outreach, education and training programs,
12 and inspections. Prior to beginning any such program, the
13 Secretary shall meet and discuss with representatives of
14 employers and employees in the industries affected by
15 such program the intended goals and benefits of such pro-
16 gram, the number of inspections under such program, and
17 the nature of other activities planned. To the extent prac-
18 ticable, the Secretary shall coordinate efforts with such
19 representatives. Each such program shall have a date of
20 termination and shall include methods of evaluating the
21 effectiveness of the program in reducing illness and injury
22 in the targeted industries or operations.”.

23 (c) INVESTIGATIONS OF DEATHS AND SERIOUS INCI-
24 DENTS.—Section 8 (29 U.S.C. 657), as amended by sub-

1 section (b), is further amended by inserting after sub-
 2 section (j) the following new subsection:

3 “(k)(1) The Secretary shall investigate any work-re-
 4 lated death or serious incident.

5 “(2) If a death or serious incident occurs in a place
 6 of employment covered by this Act, the employer shall no-
 7 tify the Secretary of the death or serious incident.

8 “(3) As used in this subsection or section 17, the
 9 term ‘serious incident’ means an incident that results in
 10 the hospitalization of three or more employees. The Sec-
 11 retary shall by regulation define ‘hospitalization’.”.

12 **SEC. 11. PENALTIES.**

13 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is
 14 amended—

15 (1) by striking subsections (a), (b), (c), (j), and
 16 (k);

17 (2) by redesignating subsections (d), (e), (f),
 18 (g), (h), (i), and (l) as subsections (b), (c), (d), (e),
 19 (f), (g), and (h), respectively; and

20 (3) by inserting before subsection (b) (as so re-
 21 designated) the following new subsection:

22 “(a)(1) Any employer who violates the requirements
 23 of section 5, any standard, rule, or order promulgated pur-
 24 suant to section 6, or any other regulation promulgated
 25 under this Act may be assessed a civil penalty of not to

1 exceed \$7,000. The Commission shall have authority to
2 assess all civil penalties provided in this section, giving due
3 consideration to the appropriateness of the penalty with
4 respect to—

5 “(A) the size of the employer;

6 “(B) the number of employees exposed to the
7 violation;

8 “(C) the likely severity of any injuries directly
9 resulting from such violation;

10 “(D) the probability that the violation could re-
11 sult in injury or illness;

12 “(E) the employer’s good faith in correcting the
13 violation after it has been identified;

14 “(F) the extent to which employee misconduct
15 was responsible for the violation;

16 “(G) the effect of the penalty on the employer’s
17 ability to stay in business; and

18 “(H) whether the violation is the sole result of
19 the failure to meet a requirement, under this Act or
20 prescribed by regulation, with respect to the posting
21 of notices, the preparation or maintenance of occu-
22 pational safety and health records, or the prepara-
23 tion, maintenance, or submission of any written
24 information.

1 “(2)(A) A penalty assessed under paragraph (1) shall
2 be reduced by 25 percent in any case in which the em-
3 ployer—

4 “(i) maintains a safety and health program for
5 the worksite at which the violation for which the
6 penalty was assessed took place; or

7 “(ii) shows that the worksite at which the viola-
8 tion for which the penalty was assessed took place
9 has an exemplary safety record.

10 If the employer maintains a program described in clause
11 (i) and has the record described in clause (ii), the penalty
12 shall be reduced by 50 percent.

13 “(B) No penalty shall be assessed against an em-
14 ployer for a violation other than a violation that—

15 “(i) has been previously cited by the Secretary;

16 “(ii) creates an imminent danger;

17 “(iii) has caused death; or

18 “(iv) has caused a serious incident,

19 if the worksite at which such violation occurred has been
20 reviewed or inspected under a program described in sec-
21 tion 8A(c)(1) during the 1-year period before the date of
22 the citation for such violation, and such employer has com-
23 plied with recommendations to bring such employer into
24 compliance within a reasonable period of time.”.

1 (b) SPECIAL ASSESSMENTS.—Section 17 (29 U.S.C.
2 666), as amended by subsection (a), is further amended
3 by adding at the end the following new subsection:

4 “(i) The Secretary shall, by regulation, prescribe pro-
5 cedures for determining that conditions surrounding a vio-
6 lation warrant a special assessment. Such regulation shall
7 provide that all findings shall be in narrative form and
8 provide for individual review of violations for special as-
9 sessment in the following circumstances:

10 “(1) Violations causing fatalities.

11 “(2) An excessive history of serious incidents or
12 a pattern of violations of this Act that cause or are
13 likely to cause death or serious incidents.

14 When the Secretary determines that a special assessment
15 is appropriate, the Secretary may apply an appropriate
16 multiplier, based on the factors described in subsection
17 (a), of not greater than 10 to the penalty determined
18 under subsection (a). In addition to any fines assessed
19 with respect to the violations described in paragraphs (1)
20 and (2), the Secretary may require the employer involved
21 to establish a comprehensive safety and health program
22 for the worksite at which the violations occurred and pro-
23 vide regular certification to the Secretary that such em-
24 ployer is in compliance with such program.”.

1 (c) CITATIONS.—Section 17 (29 U.S.C. 666), as
2 amended by subsection (b), is further amended by adding
3 at the end the following new subsection:

4 “(j) Nothing in this Act shall be construed as requir-
5 ing the Secretary to issue a citation for violations of this
6 Act if the Secretary believes that the public interest will
7 be adequately served by a suitable written notice or
8 warning.”.

9 (d) VICTIM’S RIGHTS.—Section 10 (29 U.S.C. 659)
10 is amended by adding at the end the following new sub-
11 section:

12 “(d)(1) The Secretary shall provide any individual
13 who is a victim of a violation of this Act with—

14 “(A) access to information with respect to any
15 investigation of the Secretary or hearing by the
16 Commission of such violation, to citations issued for
17 such violation, to penalties imposed under this sec-
18 tion for such violation, and to settlements made with
19 respect to such violation; and

20 “(B) an opportunity to meet with the Secretary
21 or a representative of the Secretary with respect to
22 such violation.

23 “(2) For purposes of paragraph (1), the term ‘victim’
24 means—

1 “(A) an employee who has sustained a work-re-
2 lated injury or illness that is the subject of an in-
3 spection or investigation conducted under section 8;
4 or

5 “(B) a family member of an employee described
6 in subparagraph (A) who is killed as a result of such
7 injury or illness.”.

8 **SEC. 12. STATE PROGRAMS.**

9 Section 18(c) (29 U.S.C. 667(c)) is amended—

10 (1) in paragraph (2)—

11 (A) by striking “and which” and inserting
12 “which”; and

13 (B) by inserting after the comma at the
14 end the following: “and which, standards when
15 applicable to the labeling, content, and hazard
16 information for such products, are identical to
17 any requirement under a standard promulgated
18 under section 6,”;

19 (2) in paragraph (4), by inserting before the
20 comma the following: “in a manner at least as effec-
21 tive as enforcement by the Secretary”; and

22 (3) by adding at the end the following new
23 flush sentence:

24 “The Secretary may waive any of the requirements of this
25 subsection (other than the requirement of paragraph (2))

1 upon the request of a State seeking approval of a plan
2 or an amendment to an approved plan. Such a waiver shall
3 not extend for more than 3 years but may be renewed if
4 the Secretary determines that the rate of occupational fa-
5 talities, injuries, and illnesses has declined in such State
6 during the period of the waiver.”.

7 **SEC. 13. PREVENTION OF ALCOHOL AND SUBSTANCE**
8 **ABUSE.**

9 The Act is amended—

10 (1) by striking sections 28 through 31;

11 (2) by redesignating sections 32, 33, and 34 as
12 sections 29, 30, and 31, respectively; and

13 (3) by inserting after section 27 (29 U.S.C.
14 676) the following new section:

15 **“SEC. 28. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

16 “(a) TESTING PROGRAMS.—Whenever there exists
17 the reasonable probability that the safety or health of any
18 employee could be endangered because of the use of alco-
19 hol or a controlled substance in the workplace, the em-
20 ployer of such employee may establish and implement an
21 alcohol and substance abuse testing program in accord-
22 ance with subsection (b).

23 “(b) STANDARDS.—The Secretary shall establish
24 standards under section 6 for substance abuse and alcohol

1 testing programs established under subsection (a) as
2 follows:

3 “(1) SUBSTANCE ABUSE GUIDELINES.—The
4 substance abuse testing program shall conform, to
5 the maximum extent practicable, to subpart B of the
6 mandatory guidelines for Federal workplace drug
7 testing programs published on April 11, 1988, by
8 the Secretary of Health and Human Services at 53
9 Federal Register 11979 and any amendments adopt-
10 ed to such guidelines.

11 “(2) ALCOHOL GUIDELINES.—The alcohol test-
12 ing program shall take the form of alcohol breath
13 analysis and shall conform, to the maximum extent
14 practicable, to any guidelines developed by the Sec-
15 retary of Transportation for alcohol testing of mass
16 transit employees under the Department of Trans-
17 portation and Related Agencies Appropriations Act,
18 1992.

19 “(c) CONSTRUCTION.—This section shall not be con-
20 strued to prohibit an employer from requiring an employee
21 to submit to and pass an alcohol or substance abuse test—

22 “(1) on a for cause basis or where the employer
23 has reasonable suspicion to believe that such em-
24 ployee is using or is under the influence of alcohol
25 or a controlled substance;

1 “(2) where such test is administered as part of
2 a scheduled medical examination;

3 “(3) in the case of an accident or incident in-
4 volving the actual or potential loss of human life,
5 bodily injury, or property damage;

6 “(4) during and for a reasonable period of time
7 (not to exceed 5 years) after the conclusion of an al-
8 cohol or substance abuse treatment program;

9 “(5) on a random selection basis in work units,
10 locations, or facilities where alcohol and substance
11 abuse has been identified as a problem or as part of
12 a universal testing program; or

13 “(6) on a preemployment basis.”.

14 **SEC. 14. SMALL BUSINESS ASSISTANCE AND TRAINING.**

15 Section 16 (29 U.S.C. 665) is amended—

16 (1) by inserting “(a)” after the section designa-
17 tion; and

18 (2) by adding at the end the following new sub-
19 sections:

20 “(b) The Secretary shall publish and make available
21 to employers a model injury prevention program that if
22 completed by the employer shall be considered to meet the
23 requirement for an exemption under section 8A or a re-
24 duction in penalty under section 17(a)(2)(A).

1 “(c) The Secretary shall establish and implement a
2 program to provide technical assistance and consultative
3 services for employers and employees, either directly or by
4 grant or contract, concerning worksite safety and health
5 and compliance with this Act. Such assistance shall be
6 targeted at small employers and the most hazardous
7 industries.

8 “(d) This subsection authorizes the consultative serv-
9 ices to employers provided under cooperative agreements
10 between the States and the Occupational Safety and
11 Health Administration and described in part 1908 of title
12 39, Code of Federal Regulations.

13 “(e) Not less than one-fifth of the annual appropria-
14 tion made to the Secretary to carry out this Act shall be
15 expended for the purposes described in this section.”.

16 **SEC. 15. EXEMPLARY PROGRAMS.**

17 (a) ESTABLISHMENT.—The Secretary of Labor shall
18 establish an award that shall periodically be made to com-
19 panies and other organizations that have implemented
20 particularly effective approaches to addressing occupa-
21 tional safety and health in the workplace, including com-
22 panies and organizations that provide for effective em-
23 ployee involvement in improving safety and health and
24 that are as a consequence deserving of special recognition.

1 Recipients of the award shall receive an automatic exemp-
2 tion under section 8A(b).

3 (b) USE OF AWARD.—A company or organization
4 that is a recipient of an award under subsection (a) and
5 that agrees to help other American companies or organiza-
6 tions improve their occupational safety and health may
7 publicize its receipt of such award and use the award in
8 its advertising.

9 (c) CATEGORIES IN WHICH AWARD MAY BE
10 GIVEN.—

11 (1) CATEGORIES.—Subject to paragraph (2),
12 separate awards shall be made to qualifying organi-
13 zations and companies in each of the following cat-
14 egories:

15 (A) Small businesses.

16 (B) Other companies or their subsidiaries.

17 (C) Companies that primarily perform con-
18 struction work.

19 (2) CHANGE IN LIST.—The Secretary of Labor
20 may at any time expand, subdivide, or otherwise
21 modify the list of categories within which awards
22 may be made under paragraph (1) and may estab-
23 lish separate awards for other organizations and
24 companies including units of government, upon a de-
25 termination that the objectives of this section would

1 be better served thereby, except that any such ex-
2 pansion, subdivision, modification, or establishment
3 shall not be effective unless the Secretary of Labor
4 has submitted a detailed description thereof to the
5 Congress and a period of 30 days has elapsed since
6 the submission.

7 (d) CRITERIA FOR QUALIFICATION.—An organization
8 or company may qualify for an award under subsection
9 (a) only if such organization or company—

10 (1) applies to the Secretary of Labor in writing
11 for the award;

12 (2) permits a rigorous evaluation of the occupa-
13 tional safety and health operations of such organiza-
14 tion or company; and

15 (3) meets such requirements and specifications
16 as the Secretary of Labor determines to be appro-
17 priate to achieve the objectives of this section.

18 In applying paragraph (3) with respect to any organiza-
19 tion or company, the Secretary of Labor shall rely upon
20 an intensive evaluation of the occupational safety and
21 health operation. The examination should encompass all
22 aspects of the current occupational safety and health prac-
23 tice of such organization or company. The award shall be
24 given only to organizations and companies that have made
25 outstanding improvements in the occupational safety and

1 health practices of such organizations and companies and
 2 that demonstrate effective occupational safety and health
 3 practices through the training and involvement of all levels
 4 of personnel.

5 (e) INFORMATION TRANSFER PROGRAM.—The Sec-
 6 retary of Labor shall ensure that all program participants
 7 receive the complete results of their evaluations described
 8 under subsection (d)(2), as well as detailed explanations
 9 of all suggestions for improvements. The Director shall
 10 also provide information about the awards and the suc-
 11 cessful safety and health improvement strategies and pro-
 12 grams of the award-winning participants to all partici-
 13 pants and other appropriate groups.

14 (f) FUNDING.—The Secretary of Labor is authorized
 15 to seek and accept gifts from public and private sources
 16 to carry out the program under this section.

17 (g) REPORT.—Not later than 3 years after the date
 18 of the enactment of this Act, the Secretary of Labor shall
 19 prepare and submit to the President and the Congress,
 20 a report on the progress, findings, and conclusions of ac-
 21 tivities conducted pursuant to this section along with rec-
 22 ommendations for possible modifications thereof.

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